

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7533

Investigation Re: Establishment of a Standard Offer)
Program for Qualifying Sustainably Priced Energy)
Enterprise Development ("SPEED") Resources)

Order entered: 10/5/2009

ORDER RE MOTION TO ALTER AND FOR CLARIFICATION

On August 18, 2009, the Public Service Board ("Board") issued an Order determining certain threshold legal issues, such as the eligibility of certain categories of projects for the standard offer, in this Docket.¹

On September 1, 2009, Renewable Energy Vermont ("REV") filed a motion to alter or clarify our August 18 Order.

In this Order, we grant in part and deny in part REV's motion.

REV's Motion

REV requests that the Board clarify our determination that "any project that sought regulatory approval prior to May 27, 2009, the effective date of Act 45, is not eligible to participate in the standard offer program."² Specifically, REV recommends that we clarify that the words "regulatory approval" refer only to a certificate of public good ("CPG") issued under 30 V.S.A. §§ 248 or 219a. REV contends that the term regulatory approval is too broad, given the number of regulatory approvals that certain projects must receive. REV specifically cites to the multi-year Federal Energy Regulatory Commission ("FERC") review process for hydroelectric projects, and states that "[p]roject developers often seek a FERC license even

1. The Order was originally issued in Dockets 7523 and 7533. However, the Vermont Energy Act of 2009 (Public Act 45 (2009 Vt., Bien. Sess.)), which required that the Board create the standard-offer program, required that our investigation in Docket 7523 be completed by September 15, 2009. In opening Docket 7533, we expressly stated that Docket 7533 would address any implementation issues that were not fully resolved in Docket 7523. Accordingly, this Order is issued only in Docket 7533. *See* Docket 7533, Order of 6/29/09.

2. Docket 7523 and 7533, Order of 8/18/09 at 11.

though the economics of a project may not be favorable because they are willing to take the risk that market conditions will improve." REV concludes that a hydroelectric developer would make its decision as to whether to proceed with the project based on the availability of the standard-offer prices.

In addition, REV requests that the Board clarify that projects approved under Section 219a (the statute governing net metering) be allowed to withdraw its CPG, submit a petition under Section 248, and apply for a standard offer. REV states that this approach will still require projects to receive approval under the relevant statute, but also provide flexibility for developers to move from one program to another.

Comments Received

The Group of Municipal Electric Utilities ("GMEU")³ states that, if the Board accepts REV's argument, the relief should be narrowly tailored to exclude projects that have relied upon the availability of pricing terms other than those contained in the standard offer. GMEU contends that a developer's willingness to pursue regulatory approvals prior to the enactment of the standard-offer program is likely the best evidence that the developer had an incentive to build the project prior to the existence of the standard-offer program. GMEU states that a case-by-case review of such projects would add additional burdens, but if the number of projects in such a category is small, this may prove to be an effective approach.

Additionally, GMEU states that REV has not provided any basis for altering the August 18 Order with respect to the question of whether projects that have applied under Section 219a can withdraw under that program and apply under Section 248 to be eligible for the standard offer.

3. GMEU consists of Barton Village, Inc. Electric Department, Village of Enosburg Falls Water & Light Department, Town of Hardwick Electric Department, Village of Hyde Park Electric Department, Village of Jacksonville Electric Company, Village of Johnson Water & Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department, Village of Northfield Electric Department, Village of Orleans, Inc. Electric Department, Town of Readsboro Electric Light Department, and Swanton Village, Inc. Electric Department.

Central Vermont Public Service Corporation ("CVPS") filed a letter recommending that the Board deny REV's request. CVPS states that projects in development or operation prior to the effective date of Act 45 should not be eligible for the standard offer.

The Department of Public Service ("Department") states that it "interpreted the Board Order to include regulatory approval under 30 V.S.A. §§ 248 or 219a and supports the Board ruling on that issue." In addition, the Department recommends that the Board deny REV's request with respect to the ability of developers to switch from net metering to the standard offer.

REV filed a reply to GMEU's response, stating that, in REV's experience, a request for regulatory approval for those projects that do not require a CPG under Section 248 does not provide adequate evidence that the developer has sufficient incentive to proceed with the project.

Discussion and Conclusions

We find that REV's argument is persuasive that certain categories of requests for regulatory approval are insufficient evidence that a project will be constructed. For projects undergoing highly complex, multi-year and multi-agency review, certain preliminary regulatory requests are indeed likely to be part of the project scoping process. Accordingly, we clarify that any project that sought regulatory approvals involving 30 V.S.A. §§ 248 or 219a prior to May 27, 2009, the effective date of Act 45, is not eligible to participate in the standard-offer program. Filing for other regulatory approvals prior to May 27, 2009, will not bar projects from participating in the standard-offer program.

With respect to REV's second request, we note that our Order specifically addressed the eligibility of projects that have received approval under the net metering statute:

A developer of a project that sought approval under the net metering statute after May 27, 2009, and had not begun site preparation or construction on the project, could request that the certificate of public good issued under that statute be revoked (or request that its petition be withdrawn if a petition was filed and a certificate of public good was not yet issued) and then file a petition for a certificate of public good under Section 248 and request the standard offer prices.⁴

4. Dockets 7523 and 7533, Order of 8/18/09 at footnote 13.

It is unclear what additional flexibility REV is requesting for net metered projects, and REV has not provided any new rationales for altering our decision. Accordingly, we deny REV's request for clarification regarding the eligibility of net metered projects for the standard offer.

So ORDERED.

Dated at Montpelier, Vermont, this 5th day of October, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: October 5, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.